

MEETING
STATE OF CALIFORNIA
THE RECLAMATION BOARD
OPEN SESSION

THE RECLAMATION BOARD
3310 EL CAMINO AVENUE
ROOM 1140
SACRAMENTO, CALIFORNIA

FRIDAY, DECEMBER 7, 2007

9:37 A.M.

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APPEARANCES

BOARD MEMBERS

Mr. Benjamin Carter, President

Mr. Butch Hodgkins, Vice President

Ms. Lady Bug Doherty, Secretary

Mr. John Brown

Ms. Teri Rie

Ms. Emma Suarez

STAFF

Mr. Jay Punia, General Manager

Mr. Eric Butler, Senior Engineer

Mr. Scott Morgan, Legal Counsel

Ms. Lorraine Pendlebury, Staff Assistant

ALSO PRESENT

Ms. Virginia Cahill, Attorney General's Office

Mr. Dennis O'Connor, Senate Natural Resources and Water
Committee

Mr. Scott Shapiro

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1 PROCEEDINGS

2 PRESIDENT CARTER: Good morning, ladies and
3 gentlemen. Welcome to the State Reclamation Board
4 meeting.

5 Mr. Punia, would you please call the roll.

6 GENERAL MANAGER PUNIA: Jay Punia, General
7 Manager for the Reclamation Board.

8 Except Board Member Teri Rie, the rest of the
9 Board members are present.

10 And Board Member RoseMarie Burroughs.

11 PRESIDENT CARTER: Very good. Thank you.

12 Okay. At this time the Board will enter into
13 closed session, as agendized, to discuss litigation
14 (Natural Resources Defense Council versus Reclamation
15 Board; Case No. 06CS01228) pursuant to Government Code
16 Section 11126(e)(2)(A).

17 (Thereupon the Board recessed into
18 closed session at 9:11 a.m.)

19 (Thereupon the Board resumed open
20 session at 9:37 a.m.)

21 PRESIDENT CARTER: Good morning, ladies and
22 gentlemen. Welcome to the State Reclamation Board
23 meeting. This is a special meeting called by the Board.

24 Let the record show that the Board did meet in
25 closed session this morning beginning at 9 to discuss

1 litigation as agendized on the agenda published for today.

2 At this point we're on to Item 3, Approval of the
3 Agenda.

4 So the Chair will entertain a motion to approve
5 the agenda.

6 BOARD MEMBER SUAREZ: So moved.

7 BOARD MEMBER RIE: Second.

8 PRESIDENT CARTER: A motion and a second.

9 Is there any discussion?

10 All those in favor indicate by saying aye.

11 (Ayes.)

12 PRESIDENT CARTER: Opposed?

13 Okay. The motion carries.

14 I want to check -- can people -- this is not an
15 ideal setting for our meeting and it's actually a last
16 resort as a result of busy holiday schedules. But can
17 everyone hear us back there?

18 Good. Okay. We want to be sure that everyone
19 can hear.

20 And I also want to note that on the agenda -- on
21 the published agenda there was no item called "Public
22 Comment." Typically the Board has public comment listed
23 on its agenda. That particular item is for comment on
24 items that are not agendized for that particular meeting.
25 I do want to emphasize that we want anybody who wants to

1 speak from the public on the agendized items for today,
2 they are welcome to address the Board. What we do ask is
3 that you indicate in some way -- and Lorraine has -- do we
4 have cards for people?

5 STAFF ASSISTANT PENDLEBURY: Out on the table.

6 PRESIDENT CARTER: If you do want to address the
7 Board, please -- if you do intend to speak to the Board,
8 please fill out one of those cards and we'll know to
9 recognize you. But there'll be ample opportunity. Just
10 get my attention if you want to address the Board.

11 What we're here today -- the primary purpose for
12 today and our plans are to go from now until approximately
13 11:30, at which point we will adjourn. And then we have
14 another meeting scheduled on the same topic for next
15 Friday, a week from today, scheduled at the Resources
16 Building in the Resources auditorium downtown, to consider
17 the same topics.

18 But our real objective today is to address the
19 Board's concerns and plans in terms of the transition as a
20 result of the legislation -- the new legislation that was
21 recently enacted.

22 I'm going to give kind of a brief overview of the
23 main concerns of the Board at this point and what we have
24 done so far in addressing those concerns and what we have
25 in process at this point.

1 So are there any questions about process for
2 today?

3 Okay. Again, anybody feel free to chime in. And
4 Butch -- myself and Butch have primarily been involved in
5 the discussions with the Department and other interested
6 parties, stakeholders, and whatnot. I'm going to ask
7 Butch to be sure and chime in and add if I forget
8 anything.

9 At this point, the Board's main concerns are the
10 impacts of the legislation on The Rec Board in the areas
11 of the evidentiary hearing process, ex parte
12 communications, and conflict of interest. We are in the
13 process of reviewing those implications, and I'll talk
14 more about that in a moment.

15 Also, we are interested in the implications of
16 the legislation in terms of our organization and staffing,
17 staffing for our existing needs, which are our historical
18 needs and duties and responsibilities; as well as the new
19 responsibilities or additions to our role but that have
20 been added as a result of the legislation.

21 Thirdly, we are -- and related to particularly
22 the second item is an MOA, or an agreement, between DWR
23 and the Central Valley Flood Protection Board that we're
24 in the process of negotiating, crafting, that is
25 consistent with the intent of the legislation. One of the

1 challenges in that particular task is really trying to
2 understand what the intent of the legislation was. And
3 obviously there's -- there are a lot of interpretations
4 with regard to what that intent was. And we are trying to
5 flesh that out, and this meeting is part of that process.

6 So we're soliciting input from the Department,
7 from the Board members, from the members of the
8 Legislature, members of the public in helping us interpret
9 that.

10 So those are the primary concerns of the Board
11 right now. That's kind of what's on our radar screen.
12 There are many other things that are around all of those
13 issues that are on the list, but we're really focusing on
14 those three items.

15 So far in terms of tackling those issues, we have
16 engage the assistance from the Secretary of Resources,
17 Kirk Miller, who is a Deputy Secretary and Legal Counsel
18 for the Resources Agency. And he is representing us from
19 a legal perspective on our negotiations with DWR in regard
20 to the memorandum of agreement. He's taking the lead on
21 that. He's, by no means, the only attorney that we're
22 talking to.

23 We continue to talk with Scott Morgan, our Chief
24 Counsel to the Board. We also have engaged the services
25 of and assistance from the Attorney General's Office. And

1 Virginia Cahill, who is in the audience -- and for
2 everybody, if Board members have not met Virginia, they
3 ought to. And Virginia is a Deputy AG, and she's going to
4 be helping us understand and implement the changes that
5 are required in Rec Board processes and policies,
6 particularly in the areas of the evidentiary hearing
7 process, ex parte, conflict of interest, and several other
8 questions that keep coming up. I keep firing e-mails to
9 Virginia kind of one at a time saying, "This is a question
10 that's come up. Can we put this on the list?" and so
11 forth.

12 DEPUTY ATTORNEY GENERAL CAHILL: And I'm making a
13 list.

14 PRESIDENT CARTER: So, anyway, Virginia has been
15 very, very helpful and is joining us here today.

16 Virginia will also continue on with the Board,
17 representing us as legal counsel, after the first of the
18 year. So essentially -- I mean Scott is our Chief Counsel
19 through the end of the year. And Virginia will continue
20 on in that capacity in the near term, primarily until we
21 get a firm memorandum of agreement between DWR -- we have
22 an understanding of exactly where we want to go in terms
23 of handling our legal, technical, and support help for the
24 Board.

25 So it's somewhat an open-ended agreement. We

1 know that we're probably going to rely on Virginia's help
2 through June, maybe a little lit longer. We'll see how
3 things go.

4 And we may -- one of the outcomes may be that we
5 decide that the long-term solution -- the best long-term
6 solution for the Board is to have a Deputy AG be the
7 permanent counsel for the Board.

8 Butch and I and Jay have had several meetings
9 with DWR to discuss the transition, to discuss the intent
10 of the legislation, to discuss cleanup legislation
11 language, and to discuss the MOA.

12 We have in fact a draft MOA that was prepared by
13 DWR that was given to the Board at the beginning of this
14 week, and we can talk a little bit more about that. I
15 don't want to get into the details of a lot of that,
16 because we are in negotiations with DWR. But I'm very
17 interested in -- Butch and I are both very interested in
18 soliciting feedback from all of you to give us guidance on
19 where you'd like us to head in terms of those
20 negotiations.

21 We've met with the Secretary of Resources and his
22 executive staff, articulating essentially where we're
23 headed. And we've met with some members of the
24 legislative staff and would like to meet with more, again
25 to get their perspective on the intent of the legislation

1 and help us navigate the implementation of this.

2 So that's kind of concerns and what we have done
3 so far.

4 Any questions?

5 Anything to add, Butch?

6 VICE-PRESIDENT HODGKINS: Well, I think it might
7 be appropriate to add that I think one of our objectives
8 and DWR's objectives is trying to minimize the potential
9 impacts on the early implementation project. And we're
10 looking for a means to be able to move forward with those
11 projects after the first of the year.

12 I can't say that we're absolutely certain we have
13 it, but we're working hard to try to find a way that makes
14 sense doing that.

15 PRESIDENT CARTER: Okay. Any other questions?

16 Okay. With that, what I'd like to do is maybe
17 ask Virginia -- would you like me to call you Virginia or
18 Ginny?

19 DEPUTY ATTORNEY GENERAL CAHILL: Ginny.

20 PRESIDENT CARTER: Ginny.

21 We've had several discussions in terms of -- from
22 the standpoint of the legislation what the term
23 "independence," or how the Board should act independently
24 of DWR, is. And so what I'd like to do is maybe ask
25 Virginia and/or Scott to kind of give their perspective

1 on -- or their initial thoughts on that, if they would.

2 DEPUTY ATTORNEY GENERAL CAHILL: Well, an early
3 version of the bill had said that they would become a
4 separate agency, and that was amended out. So I think
5 "independent" means a certain amount of control. The
6 legislation talks about transferring funding and positions
7 to the new Central Valley Flood Protection Board. So I
8 don't think necessarily --

9 PRESIDENT CARTER: Virginia, apparently we're not
10 picking you up too much on the system.

11 DEPUTY ATTORNEY GENERAL CAHILL: Do you have a
12 microphone?

13 You know, I hate to be answering this when I have
14 a legislative representative sitting next to me who might
15 better be able. And I hope you do ask him what he thinks
16 the Legislature had in mind.

17 I don't think "independent" necessarily means a
18 new agency. And I'm not at all sure you want to go there.
19 There's a lot of advantage of staying under the DWR
20 umbrella in terms of having personnel matters and
21 trainings and -- all of the things that an independent
22 agency has to do for itself, a lot of that you really
23 probably don't want to have to do for yourself.

24 But I think the provision that says there will be
25 positions and funding transferred to the Board indicates

1 that there was an intent that there be a certain amount of
2 control by the Board directly over those positions and
3 that funding.

4 I don't think we know yet quite -- exactly what
5 all of this means. And so I don't want to wade in too far
6 yet. I actually would be interested in what the
7 legislative perspective was and what DWR's perspective is.

8 PRESIDENT CARTER: Scott, did you want to --

9 STAFF COUNSEL MORGAN: I had been trying to avoid
10 putting too much on the record of what I think this means,
11 because you'll be having a separate counsel starting in
12 January, and the last thing I want is competing opinions.
13 I've been happy to share stuff with Virginia and I'll
14 continue to do so. Basically if I see anything that I'm
15 concerned about that isn't being addressed, you know, I'd
16 raise that through back channels.

17 But I do agree in principle with, you know, what
18 you just heard, that it's -- for a small group like The
19 Reclamation Board, it would be an unbelievably awkward
20 thing to create a brand new, agency completely separate,
21 with it's own accounting branch, its own contracting
22 surfaces, its own everything else. And it's certainly
23 nothing in the statute that seemed to envision that. They
24 didn't imagine that it was going to be that much work, or
25 I think they would have -- well, I would like to hope that

1 they would have addressed that. And since there was
2 nothing in there, I think it might be fair to assume that
3 that wasn't what was on their mind.

4 But, again, we have someone from the Legislature
5 here. We could just ask them. Although, I do note that
6 there were different legislative histories in the Senate
7 and the Assembly, so I guess it depends on which branch
8 we're talking to what story we're going to get.

9 PRESIDENT CARTER: Mr. O'Connor.

10 MR. O'CONNOR: Well, it's always challenging
11 to --

12 PRESIDENT CARTER: Could you, just for the
13 record --

14 MR. O'CONNOR: Oh. Dennis O'Connor, Senate
15 Natural Resources and Water Committee.

16 It's always challenging to try and encapsulate
17 what the Legislature intends when it does something,
18 because there are 88 different opinions in the Assembly
19 and 40 different opinions in the Senate. And, you know,
20 folks vote for a bill for a variety of reasons. Sometimes
21 they're for the same reasons, sometimes they're not.

22 That said, the key bill that you seem to be
23 focusing on right now was SB 17 by Senator Florez. That
24 bill when it was introduced did envision The Rec Board
25 being a completely independent and autonomous

1 organization, something akin as far as bureaucratic
2 structure to like the Transportation Commission, which is
3 completely independent of the Department of Water
4 Resources. It's not a part of the -- I mean Department of
5 Transportation. It's not a part of CalTrans. It's a
6 completely autonomous organization. But they do contract
7 with CalTrans for personnel services, accounting services,
8 those sorts of things.

9 For a variety of reasons, the bill was amended as
10 it was going through the process to -- instead of making
11 it a completely independent and autonomous organization
12 separate from DWR, to make it within DWR but operating
13 independently. My sense was that that was largely to deal
14 with the sort of administrative bureaucratic kinds of
15 issues, to make that easier. But that from a duties and
16 responsibilities perspective, that the various authors and
17 members were intending that The Rec Board still for all
18 intents and purposes be an independent and autonomous
19 organization.

20 So while for processing, you know, merit raise
21 increases or something like that, DWR would continue to do
22 those sorts of things, if it was a question of who The Rec
23 Board determines that they want to hire for a particular
24 position, it would clearly be the Board's determination,
25 and DWR's Personnel Office would not have any sort of veto

1 or response, you know, beyond the regular bureaucratic
2 processes and such.

3 And I will say that, you know, one issue that has
4 come up already given that this is going to be a rather
5 challenging budget year and such, is so how many positions
6 and that sort of stuff. I think different people will
7 have different opinions on how many positions the new
8 Board is going to require, whether it's just that list
9 that's on your current letterhead or if it's expanded or
10 something. I think that that's going to be subject to a
11 lot of discussion through the budget process, that that's
12 really where we have the right kinds of folks with the
13 right kinds of expertise to look at anticipated workload
14 changes and those sorts of things and what's the right
15 skill set necessary to do those kinds of work.

16 So, anyway, I, again -- so from at least my sense
17 of the perspective of the different members who opined on
18 this, was that they did want the Board to operate as if it
19 were independent and autonomous, but within sort of the
20 bureaucratic structure of DWR to take care of things like
21 personnel changes, that sort of stuff.

22 BOARD MEMBER RIE: Can I ask a question?

23 What about the budget? Currently The Rec Board
24 has no control over its own budget. All of the budgetary
25 decisions are made by DWR.

1 MR. O'CONNOR: Right. That's going to be a
2 challenge. And different folks have different ideas of
3 how we would structure it so that -- within the budget
4 structure to allow the Board to make its own budgetary
5 decisions. One idea -- and I don't know if this will have
6 any traction or not -- would be to give -- would be to
7 create essentially a line item in the budget for The
8 Reclamation Board, with control language saying that the
9 Board would, you know, make the decisions on that sort of
10 stuff. That's one mechanism one might use. There are
11 other ways that one might go about it. That's going to be
12 a challenge, because it does not make sense -- if the
13 Legislature wants you to operate independent of the
14 Department, then the Department shouldn't have any say
15 over how you choose to spend, say, your contracting
16 dollars.

17 BOARD MEMBER RIE: And that's another thing. We
18 don't currently have the ability to contract with
19 consultants for technical expertise. So would the
20 legislative --

21 MR. O'CONNOR: I don't think that there's
22 anything in -- I think you do have the ability to contract
23 under current law and I do think that you have -- and
24 nothing in SB 17 would change that. The constraints are
25 probably coming from the budget side as opposed to the

1 authority of the Board to contract. I'd have to double
2 check that. But I'm reasonably certain that you do have
3 the authority to contract.

4 BOARD MEMBER RIE: I think you're right. I think
5 it is coming from the budget side. There is no budget if
6 we need to contract with an consultant for expertise --

7 MR. O'CONNOR: Right.

8 BOARD MEMBER RIE: -- that we have control over.

9 MR. O'CONNOR: Right. I suspect that the Budget
10 subcommittee are going to spend a lot of time on these
11 kinds of issues in trying to figure out technically how it
12 works -- how it will work. And, you know -- I probably
13 shouldn't say this on the record. But we're probably not
14 going to get it exactly right the first time. You know,
15 we're going to -- this is going, you know -- it's a little
16 cavalier to say this, but we are kind of making this up as
17 we go. We haven't done this before. We've suddenly given
18 the Board tremendous authorities and responsibilities over
19 land-use decisions, for example. Never been clearly a
20 part of the mandate. There's been different opinions, but
21 it's never been resolved in the courts or anything like
22 that, to my knowledge.

23 And there's additional responsibilities on cities
24 and counties for land-use that they're going to need to
25 get the Board's approvals on. So there's a whole lot of

1 stuff that just hasn't been done before.

2 And I think the key message that I'd like to send
3 is that -- at least from Senator Steinberg's perspective,
4 who's going to be the ex officio from the Senate on this
5 thing -- is that the bottom line is that we want it to
6 work. And if the impediment is inartful crafting of the
7 statutes, then we'll fix that. If it's some sort of a
8 bureaucratic conflict, you know, maybe the SAM manual just
9 never anticipated this kind of a thing, then we'll work on
10 that. We want to give you guys the tools necessary to be
11 successful, because sort of the whole logic structure of
12 all of those bills was that the Board would be sort of the
13 quality control agent to make sure that everybody's doing
14 what it is that they're supposed to do. Well, in order to
15 have effective quality control, then you need to have the
16 right sorts of authorities and such and the right
17 resources to be successful at that.

18 And so any time there's a package of bills as
19 large as this, there will be some drafting errors and
20 such. And the staff are putting together our list. I'm
21 sure you guys are putting together your list. I know the
22 Department's the putting together its list of things that
23 it would like to see changed.

24 I would sort of sort things into three kinds of
25 categories. One are the obvious drafting errors. We've

1 got the reference to the code section wrong. There's no
2 question that that's, you know, sort of technical -- true
3 technical cleanup.

4 There are those issues where everyone agrees that
5 there's a problem that needs to be fixed but there's
6 differences of opinion on the exact right way to fix this
7 stuff. And that might be things like -- there's still
8 ongoing discussions on, as you mentioned, the ex parte
9 stuff or the evidentiary hearings. I think there is a
10 general agreement that, you know, language in those areas
11 need to be tweaked. I think there's probably going to be
12 for some time some differences of opinion on the exact
13 right way to do that.

14 And then there are going to be things where one
15 group thinks that this a technical fix and another group
16 says, "No, we did this on purpose." And I'm not straight
17 in my mind what all the different issues are in each of
18 those different categories. I think we're all going to be
19 sort of working through all of that stuff. But, again, I
20 think the big message is -- at least from Senator
21 Steinberg's perspective, is at the end of the day we want
22 the stuff to work.

23 PRESIDENT CARTER: Mr. Brown.

24 BOARD MEMBER BROWN: Thank you, Mr. Chairman.

25 John Brown.

1 There is some transition history along these
2 lines. And I believe Ms. Cahill is familiar with it. The
3 Porter-Cologne Act back in 1967 set up a transition
4 similar to that for the State Water Resources Control
5 Board from the Department of Water Resources. And it was
6 good transition, because we found out later that the
7 Department of Water Resources was a party, like other
8 parties that would come before the Water Board, that their
9 evidence had to be heard and compared.

10 What I would visualize and hope that might happen
11 here would be kind of a strategic plan to where --
12 ultimately that there would be a full separation between
13 the Department of Water Resources and this Board. And
14 then we can take several years to achieve that. But I
15 think that a planning process similar to the
16 Porter-Cologne Act might be something we could consider in
17 drafting a master plan, so to speak, for this Board to
18 achieve that purpose.

19 MR. O'CONNOR: Probably makes sense.

20 PRESIDENT CARTER: Okay. Any other questions of
21 Mr. O'Connor?

22 Yes.

23 VICE-PRESIDENT HODGKINS: Butch Hodgkins.

24 Dennis, the separate line item in the budget, who
25 says -- maybe that's the wrong word -- whether it's a

1 separate line item or not? Where does that -- where is
2 that determination made? Is it the Department of Finance?

3 MR. O'CONNOR: There's two sets of -- when we
4 talk about the budget, we're really talking -- we tend to
5 think of it as a single document, and there's really two
6 main documents that we talk about. One is the Governor's
7 budget, which lays out what the Governor proposes to do.
8 And the format and style of that document, while based on,
9 you know, the real technical budget stuff, is in part a
10 policy document, and different Governors over the years
11 have chosen to reveal different levels of detail, that
12 sort of stuff. That's not a controlling document.

13 The real document, the real controlling document
14 is the budget bill itself, which is introduced
15 simultaneously in both houses, that both houses work
16 through it, and it is like any other bill, it's amended
17 and goes through the process.

18 So it's through that legislative process where
19 the decision on how from a legal and controlling
20 perspective of the budget those decisions are made. So if
21 the legis -- there's a number of different ways that one
22 might do this. And it's been a long time since I've done
23 sort of technical budget work, so I'm probably not the
24 exact right person to talk to. But there's a number of
25 different approaches that one might use within the

1 appropriations for the Department to make clear that some
2 slug of bucks, to use a technical budgeting term, to
3 ensure that some amount of funds are under the direct
4 authority of the Board. There are mechanisms for doing
5 that.

6 It could be control language. It could be a
7 separate appropriation. There are processes for setting
8 up new programs, new -- I mean there's a variety of
9 different technical things. And it would clearly be in
10 negotiation with the Department of Finance and it will
11 probably consume the time of the technical budget folks
12 for some period of time. But there are a number of
13 different mechanisms, and I'm not -- you know, I
14 don't -- I would defer to the Budget committees on how
15 they would best want to do that.

16 From the Policy Committee staff perspective, we
17 let our colleagues in the Budget Committee know what
18 policy outcome we would like. And then we let them figure
19 out, you know, technically the best way to do that.

20 VICE-PRESIDENT HODGKINS: Okay. Thank you.

21 PRESIDENT CARTER: Is it realistic to expect that
22 for the '08-'09 budget cycle that we're going through
23 right now that something might happen in that regard or
24 would we be looking a year later?

25 MR. O'CONNOR: No, I would suspect -- okay. So

1 the budget bills will be introduced, you know, the first
2 week or so in January and they will go through the regular
3 legislative process. And, you know, who knows when this
4 budget is going to ultimately be signed. But, yeah, I
5 would suspect that -- it certainly will be -- I will be
6 strongly encouraging my colleagues in the Budget Committee
7 to help make that happen, you know. The members
8 themselves get to decide what does and doesn't happen. We
9 get to offer our opinion and they get to, you know, do
10 what they think is best. But that would be my strong
11 recommendation.

12 BOARD MEMBER BROWN: Can we submit that budget
13 direct or does it have to go through the Department of
14 Water Resources?

15 PRESIDENT CARTER: Our existing -- right now it
16 goes through the Department of Water Resources.

17 BOARD MEMBER BROWN: Well, with the new
18 legislation.

19 PRESIDENT CARTER: For this budgeting cycle, it's
20 probably still going to go through DWR.

21 GENERAL MANAGER PUNIA: I think maybe for Dennis'
22 information, we are putting a budget change proposal for
23 '08-'09 and requesting that it should be tackled as a
24 finance letter so that it can be entertained for this
25 fiscal year.

1 MR. O'CONNOR: That would have been my suspicion.
2 I've spent many years working in budget offices, and so --

3 GENERAL MANAGER PUNIA: Yeah. So, any help you
4 can provide, I think it -- if it can be a line item
5 separate than DWR, I think that may --

6 MR. O'CONNOR: Yeah, it would either be -- I mean
7 like I said, there are a number of different mechanisms,
8 and I don't know exactly what mechanism the budget gurus
9 are going to pick. And I would defer to their expertise.
10 But just know that there are a number of different
11 approaches that one might use. And I would suspect that
12 the Department might have a slightly different perspective
13 on what the desirable approach might be. And I
14 would -- like many things as we go through this transition
15 period, the Board is likely to have one perspective on
16 what the appropriate approach is, the Department's likely
17 to have a different one, and the Legislature and the
18 various other stakeholders may have, you know, a whole lot
19 of other ones, that it's just -- you know, we're just
20 going to have to sort of hang together for awhile and know
21 that there's going to be some bumps in the road and we're
22 probably not going to get everything worked out perfect
23 the first time.

24 But, you know, as the new institution evolves,
25 then we'll just try and -- you know, again, bottom line is

1 we want it to work.

2 PRESIDENT CARTER: Emma.

3 BOARD MEMBER SUAREZ: I have a question.

4 Dennis, good seeing you again. I didn't
5 recognize you with your new look.

6 I have actually a question and a suggestion, if I
7 may. I guess my question for your boss -- and Assemblyman
8 Wolk from the Assembly side will be joining us starting in
9 January.

10 MR. O'CONNOR: Right.

11 BOARD MEMBER SUAREZ: I think I would -- I would
12 be interested in hearing what your thoughts are in terms
13 of what their expectations are as they come and join the
14 Board, how we can help that transition for them better.
15 And so that's one issue.

16 And then my suggestion also would be -- and I
17 appreciate you coming here today. We have a couple of
18 folks in the audience that have expressed some concern
19 about their transition. They're looking at projects
20 starting next year, early in the year. They're not sure
21 whether the world ends starting January 1st or what
22 happens.

23 So I think it would be great if you can sit and
24 stick around and listen to some of those concerns so you
25 have some perspective of --

1 MR. O'CONNOR: Unfortunately, I do have some time
2 constraints that I'm operating under.

3 But, you know, for those in the audience that
4 want to ensure that the Legislature is informed, you
5 people know that I'm probably one of the more accessible
6 staff members in the Legislature. And, you know, we're
7 always willing to talk and listen and try to accommodate
8 everyone's issues in an appropriate way.

9 As far as what the expectations are from Assembly
10 Member Wolk, I have no idea.

11 Again, Senator Steinberg's real concern is he
12 represents the Senate district that probably is most at
13 risk for catastrophic flooding in a mechanism that, you
14 know, in a worst-case scenario could have profound
15 implications on the state and region's economy, not to
16 mention the loss of life issues and those things. So he
17 very much has invested in wanting to make sure that the
18 transitions -- the changes that the Legislature has put in
19 place occur as quickly and as seamlessly as is possible.
20 And that's really sort of his main concern.

21 And so I don't know exactly what it is that he's
22 going to want to see the Board do or how it -- you know,
23 those kinds of -- how it conducts its business, how it
24 represents itself, how it approaches problem solving. I
25 don't know that he has any preconceived notions of what

1 he's looking for, so I don't know that I can be
2 particularly helpful on that.

3 But, again, you know, we are going to sort of be
4 making this up as we go. And I think it was just really
5 more of one of the reasons why the Legislature was very
6 interested in ensuring that there was -- some legislative
7 involvement in the deliberations of the Board was at least
8 in part because when members of the Legislature either sit
9 on the board in either an official capacity or as an ex
10 officio capacity, there's a level of communication that
11 arises that doesn't always arise with other departments or
12 other organizations and such. And so it's really more
13 to -- so that the members are more aware or better aware
14 of what the organization is doing and how it's going about
15 doing it, so that if there are issues, policy issues or
16 something, we're aware of them -- they're aware of them
17 quickly and can respond in whatever appropriate manner
18 they see fit. I think with a transitional organization
19 like this I think that's probably going to be really
20 useful, because there's likely to be a number of
21 unintended consequences with the legislation, and the
22 implementation of that legislation, that having the
23 members weigh in quickly probably will help avoid
24 problems, you know.

25 I don't know that there's -- I've not been given

1 any specific marching orders, for example, to cut -- you
2 know, to send any messages today. Whereas, for example,
3 the -- we sit on the Bay Delta Authority and there have
4 been a number of occasions where I've been given very
5 specific messages to deliver. We're not in that position
6 here. We're really just hear to help and try and help
7 everyone sort of think through the process, think through
8 how to make this work.

9 PRESIDENT CARTER: Teri. Ms. Rie.

10 BOARD MEMBER RIE: Traditionally, the staff for
11 The Rec Board has been very small because we've been under
12 the control of DWR. So they have really tried to limit
13 the amount of staff, and they have asked in the past that
14 we delegate most of the work responsibility and the review
15 responsibility to DWR staff, which they supervise and they
16 control.

17 With the new legislation, would you anticipate
18 that we should be requesting additional staff to handle
19 the additional responsibility, or would you anticipate
20 that the staff would stay small and that those
21 responsibilities would remain with DWR staff?

22 MR. O'CONNOR: The Board is going to have to
23 start -- a couple things. One is that the workload's just
24 going to increase because we've now asked you to do a
25 whole lot more than what you've done in the past.

1 One of those things that is much more explicit, I
2 think, is that we're going to be asking you to review the
3 Department's work. Clearly you can't delegate to the
4 Department review of their own work. From a budget
5 perspective, how do you accommodate that and all that, you
6 know, that's a different -- you know. But clearly
7 resources sufficient to do that kind of stuff at the very
8 least seems appropriate. Again, clearly that's going
9 to -- how that gets worked out through the budget process,
10 you know, I don't know. But I do think that you could
11 make a very credible case that the workload is going to
12 increase in a way so that certainly not everything that
13 one would normally delegate to the Department could still
14 be delegated.

15 Again, you know, much of the -- throughout the
16 legislation, you will see the Department will propose and
17 the Board shall adopt, implying that the Board has some
18 review responsibilities of what the Department has done.
19 That will take some level of effort, not from the
20 Department, from -- you know, under the auspices of the
21 Board to do that. Whether it's a specific staff person
22 assigned to do that or whether it's opening it up for a
23 hearing or how you do that review, I think is open for
24 discussion.

25 But clearly you could not delegate to the

1 Department the responsibility to review its flood
2 management plan, for example.

3 BOARD MEMBER RIE: Now, we've had past meetings,
4 our public meetings where we've had discussions about
5 staffing. And the Board members have said, "Well, we need
6 to staff up. We need ten more engineers." And I don't
7 want to put you on the spot, but I'm sure that that
8 request has gotten back to the Department of Water
9 Resources and they've come back and said, "No, we're only
10 going to give you two." And since they control the budget
11 change request process, if we think we need ten, and then
12 they come back and they put the request in to the
13 Department of Finance for only two, how do we deal with
14 that? You know, we're sort of at a disadvantage here.

15 MR. O'CONNOR: Yeah, that is a challenge that I
16 don't know that the Legislature can explicitly help you
17 with. You know, you are a part of the Department of Water
18 Resources. And even if you were an independent
19 organization, the budget development process is, you know,
20 each department gets its baseline budget, goes through the
21 escalation processes, all that stuff, adjusts for whatever
22 changes, and then comes up with whatever their budget
23 change proposals might be and forwards that on then to the
24 Resources Agency, in this case, who does their own sort.
25 And one of the reasons why then Governor Reagan created

1 the agency structure in the first place was because he was
2 getting all these budget requests from all these different
3 departments, they were conflicting, and there was nobody
4 sort of sorting through that sort of stuff. So the agency
5 structure was developed in part to sort of be that
6 filtering level.

7 Now, I will say that if the Board were to -- and
8 I'm just sort of thinking out loud on this stuff. If the
9 Board were to formally adopt -- and so through that
10 process the Legislature doesn't hear what those things --
11 those are all confidential documents. You know, when I
12 was teaching the BCP writing class back when I was at
13 CalTrans, you know, a BCP doesn't exist until it's
14 reflected in the Governor's budget, you know. So I mean
15 that's sort of the operating rule.

16 So the Legislature is unaware of whatever working
17 documents or whatever that -- or discussions generally
18 about how that budget is developed. So there's not
19 a -- in the traditional structure, there's no mechanism
20 for the Legislature to know what it is that you really
21 wanted, and then be able to sort of work around the
22 process.

23 The only thing that I can think of that would
24 be -- I don't even -- I probably shouldn't even say
25 anything more. I mean that's just going to be a

1 challenge. I would talk to your counsel about what your
2 options might be for dealing with that specific
3 bureaucratic process.

4 BOARD MEMBER BROWN: What if we just submitted
5 our budget directly -- made out our budget and submitted
6 it directly to the Secretary of Resources, like DWR does?

7 MR. O'CONNOR: You know, that's something that,
8 again, I think that, you know, you all within the
9 administrative family is going to have to figure out how
10 to do that. It's really not, you know -- if
11 somehow -- because you do run into confidentiality issues
12 and all that sort of stuff. And I don't know that it's
13 really appropriate for the Legislature to tell the
14 Executive Branch how it's to prepare its proposed budget.

15 You know, we just want it to be right and all
16 that. And the process is set up so that when the budget
17 is heard in the Legislature, we can ask all kinds of
18 interesting questions like: "We've given you all this
19 work to do. You've only asked for two positions. That
20 doesn't seem to match up with our workload estimates.
21 What's your response?" I mean we can do stuff like that.
22 But as far as sort of helping you think through how to --
23 how the Executive Branch ought to work through this, I
24 don't know that that's really appropriate for -- I mean I
25 may have ideas, but I'd probably ought to keep them to

1 myself, at least on the record.

2 SECRETARY DOHERTY: So then does someone from
3 this group have to sit with the Department of Water
4 Resources and request to look at the section of budget
5 that would apply to us?

6 MR. O'CONNOR: Well, typically in the budget
7 process when it gets to the Legislature, when we hear the
8 budget, the Budget subcommittees will ask who they think
9 is appropriate to come and testify on the particular
10 budget issues on the agenda.

11 I would suspect that when we get to -- when the
12 Senate Budget Sub too gets to these budget issues, that
13 the committee's staff will invite the Chair of the Board
14 to come and be part of that panel -- that hearing. You
15 know, again I have to defer to my colleagues in the Budget
16 Committee to make those calls. But it would be -- it
17 would be typical, you know. When the Attorney General's
18 budget comes up, the Attorney General comes and is
19 available for questions. So I mean it is that kind of
20 level of discussion. You know, the Secretary of Resources
21 comes and talks about the Secretary's budget. You know,
22 typically the principals are there. They may bring an
23 army of technical support, which is always wise, but -- so
24 I would suspect that your Chair will have some role in the
25 budget process and will be asked questions and such. And

1 I suspect that, you know, the key focus for the Budget
2 Subcommittee is to get this transitional budget, you know,
3 the right size and the right classifications, the right
4 amount of contracting authority, and the right amount of
5 autonomy.

6 How that gets worked out again is really -- you
7 know, we're going to have to sort of work through all that
8 stuff.

9 PRESIDENT CARTER: If I can, I'd like to maybe
10 switch gears, because I know Mr. O'Connor's time is a
11 little limited here.

12 I wanted to get a flavor from you in terms of
13 our -- one of the issues that -- or one of the challenges
14 I mentioned is the evidentiary hearing process. And as
15 I'm sure you're aware, the legislation says that we are to
16 conduct evidentiary hearings for any permit that comes
17 before the Board. This Board approves or considers 200,
18 plus or minus, permits a year, of which a very small
19 percentage of those actually historically have come before
20 the Board because they are -- the Board has either
21 delegated the authority to the General Manager to approve,
22 kind of routine encroachment applications, relatively
23 minor things.

24 A concern the Board has is that if we were to
25 bring everything before the Board, we would have a logjam.

1 Was that in fact the intent of the Legislature
2 or --

3 MR. O'CONNOR: It was certainly not the intent of
4 the Legislature that there be a logjam before the Board.

5 This is one of those issues where I think goes
6 into that second bucket where it's -- everyone agrees that
7 there's an issue there that needs to be resolved, but
8 there may be different opinions on the exact right way to
9 do it.

10 Speaking for our committee, we would be
11 interested in whatever opinions you all have on what the
12 proper way of resolving that is, as we're interested in
13 how, you know, the greater flood community believes that
14 it needs to be done. I mean it's a -- you know, we are
15 interested in the appropriate level of review with the
16 appropriate record established for each of those
17 decisions. How you determine what's appropriate is going
18 to be the hard part.

19 But I think -- I mean I think there's a solution.
20 The various ideas that I've heard bouncing around, I think
21 many of them, you know, warrant exploring. And the good
22 news is is that this is the kind of an issue that the
23 legislative process is actually well suited to resolve.

24 BOARD MEMBER BROWN: Mr. Chairman?

25 PRESIDENT CARTER: Yes.

1 BOARD MEMBER BROWN: Dennis, for your evaluation,
2 I considered many of those would be on a consent calendar
3 unless there was an objection by a member of the audience.
4 Then it would be up to the Board to determine if an
5 objection was serious enough to hold hearings on or not.

6 MR. O'CONNOR: Yeah, I would suspect that some --
7 I mean, you know, the State Water Board has a fairly
8 extensive consent calendar and such, you know. I'm not
9 sure that -- I don't know that the law needs to be
10 clarified to go down that path should that be the path
11 that you want to go. You know, it really sort just -- I
12 think the approach that I would suggest is to try and
13 figure out what the ideal approach would be and then see
14 if we need to make any adjustments to the law to
15 accommodate that.

16 BOARD MEMBER BROWN: Okay.

17 BOARD MEMBER RIE: And I agree with you. You
18 know, most local cities and counties, the Board makes
19 every decision, votes on every decision. And the consent
20 calendar is hundreds of items long, and they approve it in
21 two seconds.

22 BOARD MEMBER BROWN: The public process provides
23 a means, if somebody does object, to go ahead and have the
24 opportunity to do so.

25 BOARD MEMBER RIE: Absolutely.

1 PRESIDENT CARTER: Mr. O'Connor, could you give
2 us a feeling for -- you talked about the three categories
3 of discussions in terms of legislative fixes. For the
4 category 1 where -- the technical drafting errors, I think
5 you called them -- are those changes potentially -- can
6 they potentially occur before the end of the year or are
7 they going to happen in the new session and how long might
8 that take?

9 MR. O'CONNOR: Okay. So the typical process is
10 that for the noncontroversial technical sorts of things we
11 have what we refer to as committee bills that are, by
12 definition, noncontroversial technical fixes to the law.
13 And those things go through the process fairly quickly,
14 but they will become law January 1 of '09 under the
15 typical process.

16 It's rarely done but technically possible to make
17 a committee bill an urgency measure, which then, you know,
18 shortens the time -- I forget the exact time. I think
19 it's like 60 days from chaptering or something like that.
20 A much shorter period of time. You don't have to wait
21 until January. But it raises the vote threshold. But,
22 again, if they're truly technical amendments, then there's
23 really not much of a problem in, you know, meeting both
24 thresholds as such.

25 I think that as we sort through the different

1 issues, one of the things that we have to figure out is
2 what's the best legislative strategy for getting all these
3 things done, which things have to happen right away, which
4 things don't have to happen right away, can wait until the
5 following year. There's a lot of -- I know just speaking
6 for the Senate staff, we're just now starting to sort
7 through our take on what those sorts of things are.

8 Nothing will be done before January 1 of this
9 year -- this upcoming year. So I mean it's, you know --
10 we passed a lot of words, and it takes awhile to sort of
11 sort through all those words to see where the inadvertent
12 errors might be and which ones are critical, we have to
13 fix right away, and which ones are okay, you know, if we
14 don't get to it till next year, it's okay.

15 PRESIDENT CARTER: Are there any other questions
16 for Mr. O'Connor?

17 MR. O'CONNOR: Great.

18 PRESIDENT CARTER: Thank you.

19 MR. O'CONNOR: Well, thank you.

20 And, you know, again, Senator Steinberg just
21 really wants this to work. So anything we can do to help
22 you be more successful -- in being successful, please feel
23 free to contact us.

24 PRESIDENT CARTER: Okay. Thank you very much for
25 coming to join us.

1 VICE-PRESIDENT HODGKINS: Great job.

2 PRESIDENT CARTER: Okay. At this point -- let's
3 see, I wanted to kind of brief the Board on the initial
4 thoughts on where we're headed in terms of structure for
5 the Central Valley Flood Protection Board. It goes to a
6 lot of discussions we've already had in terms of staffing,
7 independence, and so forth. And so I just wanted to
8 generally tell the Board kind of where we're headed, our
9 perspective, and get your feedback in terms of whether or
10 not that's the right direction.

11 To date, we have been trying to interpret this
12 concept of independence and what that means. We have
13 looked at the direct staff that supports the Board today
14 and then the -- what I'll call indirect staff, which are
15 essentially folks within DWR that support The Rec Board at
16 various levels of effort. Some of those are a hundred
17 percent of the time, some of them are a portion of their
18 time. And so we've been looking at those pieces of the
19 organization.

20 The general concept that we're -- that's kind of
21 driving this is that we feel that for functions that are
22 supporting the Board in the form of kind of technical
23 review or policy making, the Board should have more direct
24 control over those; the functions that are not central to
25 those things like the personnel, human resources, IT

1 support -- I mean there's a long list -- those would be as
2 appropriate to remain in the current situation where DWR
3 is providing that support to the Board. It doesn't make
4 sense to create another bureaucracy, as we discussed
5 earlier, to do a lot of those support functions.

6 So the challenge and the discussions that we've
7 had with DWR and amongst ourselves is trying to figure out
8 what are the functions that support us in helping us
9 decide, consider, establish policy, and review the
10 technical aspects of our responsibilities.

11 Now, I have to say -- I have to confess that we
12 have most recently kind of regrouped from that a little
13 bit from the standpoint that we're really trying to
14 understand and we're looking back at what the
15 responsibilities are of the Board from more of a
16 zero-based approach, where we look back at the Water Code,
17 we look at the new legislation and the changes it makes to
18 the regulations in the Water Code and say, okay, these are
19 the functions that the Board provides, these are the
20 responsibilities, these are the deliverables that are
21 contemplated, both existing or historically as well as new
22 responsibilities. And given that set of responsibilities
23 and tasks, what kind of staff do we need? And how many of
24 those kinds of staff do we need? And so it's taking a
25 step back from what exists there today to support us, but

1 instead kind of what do we need -- what do we need to
2 accomplish and what do we need to accomplish our roles and
3 responsibilities as a board.

4 And then looking at what we do have today,
5 existing staff and indirect staff, and determining where
6 it fits and where it doesn't and what kinds of changes
7 need to be made, what level of control the Board would
8 like over those staff, whether it's an indirect supporting
9 or it's directly supporting.

10 And so we're -- we're kind of taking these two
11 approaches. I have to say it's been fairly complex and
12 one in terms of understanding what we have today and
13 understanding what we need and interpreting the new
14 responsibilities. But also kind of -- figuring out the
15 array of resources we need to accomplish that. We are, I
16 would say, near the beginning of that process of really
17 understanding that. We have a lot to learn and a long
18 ways to go before we really have a -- we will have a solid
19 proposal that we can bring to the Board for their
20 consideration.

21 But that's kind of -- that's our approach. I
22 wanted to get reaction from the Board, from the public in
23 terms of that.

24 BOARD MEMBER BROWN: I'll start it out, Mr.
25 Chairman.

1 Being an engineer, I like to see pictures and
2 graphs as much as we can. I think if we had pictorially
3 identified the task items and issues that confront this
4 Board, where those task items were being performed by
5 ourselves and DWR or a contract, I'd like to see them laid
6 out and a plan developed. And I don't know whether the
7 plan would be over five years or ten years or whatever,
8 but a plan that would develop that would ultimately
9 provide us complete independence with the Department of
10 Water Resources, which would give us maybe some cutoff
11 dates to see how many of the subject issues would still
12 make sense to leave with Department of Water Resources,
13 like the payroll, personnel or whatever; but,
14 nevertheless, a plan that would take us from where we are
15 today to complete independence, with the ability to make
16 adjustments in that as appropriate; and where we could at
17 least see visually and collectively all of the task items
18 that confront this Board and staff.

19 PRESIDENT CARTER: Good suggestion.

20 Mr. Brown, could you please kind of clarify your
21 definition of "complete independence". Would this
22 be -- are you defining complete independence as if you
23 could carve The Rec Board out of the DWR and it would
24 completely stand alone in all functions?

25 BOARD MEMBER BROWN: Yes. I think that would be

1 a considered goal, but not necessarily one that would be
2 adopted by this Board. And it would be over a timeline.
3 And as we progress, then the Board would have the ability,
4 and the public and the Legislature, to reflect on where
5 that cutoff may or should be; the ultimate being the
6 complete independence, but it may make more sense to
7 contain some of those task items with the Department as we
8 progress.

9 I don't know that you can make all those
10 decisions today or within the next few months. But at
11 least you can lay it out on paper to see what it looks
12 like, and give the ability of public and Board members and
13 staff to provide input, if you can see it visually.

14 PRESIDENT CARTER: Okay.

15 BOARD MEMBER RIE: I don't know if you guys still
16 have this org chart. But when we were first appointed
17 back in 2005, DWR gave us an org chart and it was color
18 coded. There were the really dark shades of gray that
19 were -- and there were solid colors that were completely
20 100 percent support staff to the Rec Board. And then
21 there were the lighter shades of gray where they were
22 75-25 percent supportive of the Board. And then there was
23 the really light colors that were maybe 25 percent
24 supportive of the Board. So I'm wondering if you guys
25 still have those and you guys pulled those out in the

1 discussions.

2 PRESIDENT CARTER: We have that -- DWR's
3 organization has changed dramatically since 2005. They
4 have org charts. I think there's somebody that's got
5 great job security in generating org charts for DWR,
6 because they are always changing.

7 (Laughter.)

8 PRESIDENT CARTER: It's been the chart of the
9 week, quite honestly. However, we do have those. We have
10 looked at them. Some of them still have the shading, some
11 of them don't. But, by and large, with the help of Jay,
12 our staff, and DWR staff, are identifying kind of the
13 functions that are still in support at various levels of
14 effort for the Board.

15 And that was actually kind of our first approach,
16 was to look at the existing organization and say, okay, if
17 we're independent, theoretically we'd carve out these
18 pieces and they could directly report to The Rec Board.

19 And we looked at that and then we -- then the
20 discussions were around, well, what about the pieces of
21 the organization that are only partially in support of the
22 organization; how do we separate that and how do we -- how
23 does that work? And as we did that, and as we looked at
24 what our real responsibilities were, we're not convinced
25 that it makes sense to just make a wholesale cut and just

1 move pieces of the organization over and report directly
2 to The Rec Board.

3 I should put in one preface or one comment. In
4 all these discussions, from Day 1, the concept was to have
5 the employees -- was to have not a complete independent
6 organization but to have an organization that is supported
7 by DWR, particularly from the administrative support
8 functions; and that the people that are working for the
9 Rec Board are in fact DWR employees, but the control over
10 what they do is -- the direct line or the lines on the org
11 chart would come through The Rec Board as opposed to
12 through DWR management.

13 And the benefits of that are that the employees
14 of both -- that are responsible to The Rec Board as well
15 as to DWR have mobility, are part of a larger pool of
16 technical professional folks, and so they're -- we don't
17 impact their career possibilities, progression. And so
18 we've kind of always said that -- or we've kind of always
19 thought or approached this from the aspect of we are going
20 to be administratively within DWR but The Rec Board's
21 going to have more control over the resources that support
22 it.

23 And so folks will have -- will be issued badges
24 from DWR. I don't know whether they'd say Rec Board or
25 DWR. But they would get their pay checks -- payroll would

1 be administered through DWR. We would work with DWRs HR
2 to hire our people. We may hire DWR people. We may hire
3 CalTrans people. We may hire other folks within state
4 service. But still those people would remain a part of
5 the pool -- of the resources pool of folks.

6 So did I answer your question?

7 BOARD MEMBER RIE: Yeah. I think they probably
8 all want to stay and remain as DWR employees for the
9 mobility and the promotions and all that. But I think our
10 challenge right now is we don't want the people who are
11 writing permits and reviewing CEQA documents to all of a
12 sudden be pulled off their duties if we have a big permit
13 coming up, you know, January 20th and we have staff
14 working on those and then there's a big flood. You know,
15 I think we all want to help out in a flood situation. But
16 I think it becomes challenging for us to get our work done
17 when DWR controls that staff and they can just yank them
18 off the permit writing and send them out to fill sandbags.

19 PRESIDENT CARTER: Okay.

20 Butch.

21 VICE-PRESIDENT HODGKINS: I think that's -- you
22 know, that's a really good comment.

23 Part of the challenge in all of this is DWR is
24 still in the process of reorganizing itself to deal with
25 this legislation and to put an organization in place

1 that's going to be able to move forward and make effective
2 expenditures of bond money for flood control. So, you
3 know, you're trying to figure out what we need to do,
4 they're trying to figure out what they need to do. And
5 they use -- they do some cross-matrix work where when they
6 have talent in a section that's normally doing this but
7 they can use -- they have a higher priority in another
8 area and these folks can do it, they do that. And I think
9 that makes a lot of sense. So it just gives you some
10 sense of the kind of challenge.

11 And I think, you know, just thinking -- while our
12 approach has been that these would always be DWR employees
13 for the reasons that you've said, I have to say that I
14 don't think Ben and I have been thinking about things like
15 what this might look like ten years down the road. I mean
16 then you have a plan of flood control adopted, you have a
17 lot of work done on implementing general plan changes that
18 would be -- so that may be worth at least thinking about a
19 little bit.

20 But I do think your point about the importance of
21 not trying to become a competitor with DWR in hiring
22 qualified people makes, you know, really good sense.

23 PRESIDENT CARTER: Mr. Punia.

24 GENERAL MANAGER PUNIA: I just wanted to
25 elaborate a little more what Ben told you so that we are

1 all on the same page as far as the structure.

2 The legal counsel we have made a decision based
3 upon the new legislation that we need an independent legal
4 counsel. And as a result Ms. Cahill is here. And there's
5 also a school of thought that we may need two legal
6 counsel, one for the Board and one for the staff. And we
7 are pursuing it through our budget change proposal there.
8 But for the time being we are just getting one separate
9 from DWR, an independent legal counsel.

10 And as far as the direct staff is concerned,
11 based upon the new legislation, there are additional
12 responsibilities coming to us, and we are trying to
13 augment our existing staff through the budget change
14 proposals. And the initial indication is that we may not
15 get it starting January 1st but we may most likely get it
16 July 2008, our augmentation to our existing direct staff.

17 Indirect staff, I think, as Ben indicated, that
18 we are envisioning that the indirect staff, which is
19 supporting The Rec Board function, will stay in DWR, but
20 we will have more say in the functioning of the staff who
21 are supporting us on the technical matters - permits,
22 inspections, and project augments. So that's the way we
23 are working with DWR to reach a meeting of the minds as to
24 how that indirect staff will function that we have more
25 coordination and say in working with them.

1 And then the indirect staff supporting
2 administrative functions, personnel, budget, they will
3 remain as they are, supporting us on hiring and on
4 personnel matters. And we are -- as Ben mentioned, you
5 have been working with DWR to finalize that, at least move
6 ahead on the interim MOU. So that we will continue to
7 refine these things. But to keep us and stay us in
8 business, we will -- trying to execute this memorandum of
9 understanding that the Department of the Water
10 resources --

11 PRESIDENT CARTER: So, I guess -- John, you've
12 made a good suggestion in terms of getting the task items
13 issues, a list, spreadsheet, a picture of those test items
14 that are before the Board -- are responsible -- the
15 Board's responsible for and then a plan laid out to
16 achieve complete independence over some timeframe, perhaps
17 a long-term timeframe.

18 Our approach has not been to -- at this point to
19 try and achieve complete independence of the Department.
20 But there's no reason why we can't put that as a vision or
21 a goal at the end of the process and at any time, as you
22 suggest, stop that. I mean our near-term perspective --
23 and perhaps we haven't been looking or thinking long
24 enough term -- has been to try and establish an
25 organization within the DWR that we have direct control

1 over that is critical to our policy making and technical
2 responsibilities within DWR and have DWR still
3 approach -- still support us from the administrative
4 perspective. So that's our near-term approach.

5 And I guess, is there anybody that's extremely
6 uncomfortable with us proceeding that way?

7 BOARD MEMBER BROWN: No, that sounds fine. And
8 please don't misunderstand me in that, and my suggestion
9 to go ahead and develop a strategic plan or a master plan
10 for complete independence doesn't mean that I'm
11 recommending complete independence at all. It just means
12 that that's -- that that's a considered phase within our
13 operations, some day maybe. And it may never make sense
14 to have complete independence, particularly when you get
15 into payroll and some of the personnel issues and such.

16 But I think that could be a considered goal that
17 could provide guidance. And most master plans like that
18 change many, many times; and as we develop more
19 information -- better information, then the master plan
20 would change. But at least that gives us a place to start
21 and something to change should it become appropriate.

22 PRESIDENT CARTER: Okay.

23 VICE-PRESIDENT HODGKINS: And it also would be
24 helpful in the discussion that you heard Dennis talk about
25 between the Legislature, the administration, DWR, and the

1 Rec Board in figuring out how we make this all work, to
2 have something like that on the table if it can be done.

3 But I do think that we have to think about
4 prioritizing the activities that we undertake in terms of
5 doing that. Maybe that's something that we try to do in
6 the future, just making sure that things that are done
7 immediately don't in some way prevent us from achieving
8 that. I don't know.

9 BOARD MEMBER RIE: Right. And I think when
10 you're developing the MOA or MOU, whatever it is, I think
11 that there has to be something in there that allows the
12 Board to have control over setting the work activities of
13 the DWR staff that are directly supporting us. We need to
14 be able to prioritize their work or have some say in the
15 priorities, so that they're not diverted to another effort
16 that's nonrelated to the Rec Board. Because we have all
17 these responsibilities to get a certain amount of work
18 done that's mandated by the Legislature, so we have to
19 have ability to control how that work is going to get done
20 and who is going to do it and what the priorities are.

21 PRESIDENT CARTER: I think we're in agreement on
22 that.

23 Let me switch gears a little bit, tell you what
24 the status of the MOA is now. I don't want go into a lot
25 of detail in public session on this at this point. But I

1 can tell you where we are, I think. And, Scott or Ginny,
2 please cut me off if I cross the line.

3 We have been discussing an MOA with DWR in a
4 series of meetings for nearly a month now. And we on
5 Monday received a draft copy of an MOA from them. Since
6 we received that draft, Butch and Jay and I have had a
7 conversation with Ginny and also with Kirk Miller about
8 the content of that. Our discussions have been relatively
9 general. We at this point feel like that MOA does not
10 necessarily reflect the intent of the Legislature, at
11 least from our perspective. And so we're going to
12 continue to work that issue.

13 I believe what we are -- what we're going to do
14 at this point is essentially take a strategy of drafting a
15 bridge MOA that essentially acknowledges that we have new
16 legislation and these are the new responsibilities that
17 the board has. On top of that, the Board has existing
18 agreements with DWR that delegates some authority to DWR,
19 also empower them to support us in certain ways. We're
20 going to acknowledge all of that.

21 We are going to -- the intent of this bridge MOA
22 is to essentially allow us to continue to -- well, to hit
23 the ground running in January, to continue to do business
24 come January 1. With the support of the DWR, many of the
25 past agreements will probably be in place and remain in

1 place. But the new MOA will also acknowledge that we have
2 new things that we need to do and we're going to need
3 support for that.

4 It will also say that we are going to ultimately
5 have a new agreement, and hopefully we define a certain
6 amount of time. So within 60 days or six months or
7 whatever, the Board and DWR will have a new agreement, a
8 new MOA. We'll adopt new resolutions that will define how
9 we operate in the longer term. And our hope is that that
10 MOA will reflect the intent of the Legislature, will give
11 us more control over the resources that we need to
12 accomplish our goal. And maybe it also acknowledges a
13 longer term vision of where the organization is going to
14 head.

15 I'd actually like to have it explicitly state
16 that the MOA will be reviewed every two years, and the
17 resource needs will be assessed and renegotiated every two
18 years.

19 So that's where we are on the MOA. As far as
20 having something that is a long-term fix by January 1,
21 we're not going to be there, I don't think.

22 Although, I do want to say that I think it's
23 actually in DWR's interest to try and get pretty close
24 with the Board that's in place today, because there may be
25 changes on the Board come January 1, and those changes may

1 not be as receptive to some of the things that DWR wants
2 to do as this Board may be. So, there's potentially some
3 incentive for DWR to get -- to work with us as much as
4 possible in the near term, before any changes are made on
5 the Board.

6 So, any questions on that?

7 BOARD MEMBER RIE: Sounds good.

8 PRESIDENT CARTER: Okay. I wanted to -- I know
9 that there's some different perspectives among the Board
10 members in terms of the implications of evidentiary
11 hearings and how we handle that, whether or not our
12 existing process satisfies the intent of the legislation
13 when it comes to evidentiary hearings. I just want to
14 have kind of an informal discussion or get your thoughts
15 on what your vision is of what evidentiary hearings might
16 look like for the Board come January 1. It's subject to
17 interpretation based on what the language is in the
18 legislation. So I'd be interested in your thoughts.

19 John.

20 BOARD MEMBER BROWN: Evidentiary hearings are,
21 first of all, I think is a wonderful process, is that
22 decisions would be based upon the rules of evidence. And
23 parties that have issues before the Board have the
24 opportunity then to present that evidence. It doesn't
25 mean that policy statements can't be heard or listened to

1 also. But, nevertheless, decisions would be based upon
2 the rules of evidence, as I presume, Ginny -- or Ms.
3 Cahill, that such decisions could be appealed to the
4 Superior Court should there be a conflict -- or the
5 opportunity.

6 DEPUTY ATTORNEY GENERAL CAHILL: I would think
7 any decision of the Board ultimately is appealable.

8 BOARD MEMBER BROWN: The Board members probably
9 would serve as hearing officers. It doesn't mean that on
10 every hearing that we have that all the Board members have
11 to be present, but they all would be welcome. And you
12 would make assignments to the Board members to serve as a
13 hearing officer or like an administrative law judge would
14 do. And then there would be an appropriate staff assigned
15 to that hearing and the hearing officer. And we would
16 probably have a court reporter present at each one of
17 those. And then the recommendation would be made by the
18 hearing officer and staff before the whole Board for
19 adoption.

20 And, again, all conflicts that might arise out of
21 the consent calendar would not necessarily have to be
22 heard. That would be a judgment call by this Board. And
23 if there's a conflict from a consent calendar, then you
24 would have the opportunity to present a hearing on it --
25 public hearing.

1 And that's how I visualize it, Mr. Chairman.

2 PRESIDENT CARTER: So maybe if I can repackage
3 your thoughts a little bit.

4 Decisions based on rules of evidence, if we think
5 of the permitting process, all permits would come to the
6 Board and they would be subject to evidentiary hearings.

7 BOARD MEMBER BROWN: Possibly.

8 PRESIDENT CARTER: If a permit has been submitted
9 and there are no objections -- if we hear of no objections
10 from staff, Board members, public, that particular item
11 might be placed on a consent calendar and considered by
12 the entire Board?

13 BOARD MEMBER BROWN: Yes, sir.

14 PRESIDENT CARTER: If there's a contentious
15 permit application, where there are clearly -- Yes, sir.

16 STAFF COUNSEL MORGAN: I just wanted to remind
17 the Board that the meetings today and next Friday are
18 specifically to consider the agreement with the Department
19 for operating the Board and any proposed legislation that
20 might be changed. And the issues of how the Board once it
21 becomes the new Board in January will operate are a
22 separate matter. That's not been agendized for today.

23 PRESIDENT CARTER: Okay. So we can't have this
24 conversation?

25 STAFF COUNSEL MORGAN: Unless you can work it

1 into one of the other things that was agendized. And
2 certainly it would be appropriate in considering any
3 changes to the legislation. If there were some things you
4 wanted to do and you wanted to make some express
5 legislative proposals, it would be appropriate in that
6 context. But just as a general discussion of how to
7 operate next year, that's not agendized for today.

8 BOARD MEMBER SUAREZ: Yes, thank you, Mr. Morgan.

9 It's always good to be kept within the right boundaries.

10 And maybe -- I also share some thoughts maybe in
11 this context as you're preparing the memorandum of
12 understanding or agreement: Is that whatever discussions
13 or language you have in an agreement that deals with the
14 issue of staffing for those hearings, I'd like to perhaps
15 keep in mind, if possible, that there is a distinction
16 between the work the Board does and the work that perhaps
17 an organization like the Water Board does.

18 The Water Board in a lot of the very strict
19 evidentiary hearings that follow strict rules of evidence
20 are allocated rights. We don't allocate rights. We grant
21 licenses. And for purposes of due process considerations,
22 that's a big distinction. And it's a distinction that
23 works in our favor. It really lessens perhaps the
24 structure and the amount of technicalities that we need to
25 consider when we're putting together agreements regarding

1 staffing.

2 So I just want to keep that thought out there,
3 because it does make a difference. And Ms. Cahill, I'm
4 sure, will think through that for us. It does make a
5 difference in terms of how we structure these meetings.

6 DEPUTY ATTORNEY GENERAL CAHILL: You know, the
7 one thing I think you might want to talk about is in light
8 of the agendized item of proposed legislative changes, is
9 if you believe that the requirement that this be required
10 for every permit is excessive or not workable, that might
11 be an area where you would propose some legislative
12 change. And it is true that you don't necessarily have to
13 have the completely formal administrative law judge type
14 hearing. You have to meet due process, which is to allow
15 the applicant his say and any opponents their say and to
16 decide based on the evidence that does come in. But it
17 can be a less formal process, unless you decide that you
18 want formal process for certain types of hearings.

19 PRESIDENT CARTER: Okay. I guess I was trying to
20 get a flavor for how the process works to put in context
21 my talks with DWR in terms of staffing organization, and
22 also discussions on their proposed changes to the -- well,
23 what they call their cleanup legislation language.

24 So is that within the realm of our agendized --
25 our agenda today?

1 STAFF COUNSEL MORGAN: It certainly is. I mean
2 anything to do with changes to the legislation are within
3 the scope of the agenda.

4 PRESIDENT CARTER: Okay. All right.

5 BOARD MEMBER RIE: I think that what we have to
6 do is make it work so we can continue operating in
7 January. Or if we can't make it work, then we'll have to
8 propose legislative changes.

9 So in the context of whether or not we need
10 legislative changes, perhaps we don't really need to make
11 any legislative changes now. Perhaps we can figure out a
12 way to put all the permits on the agenda, which means we
13 need additional staff to prepare Board resolutions. And
14 once you have a standardized format, it's just you plug in
15 the information, the permit number, the applicant, you can
16 set up a template, and I've already volunteered to help
17 with that. You plug in the information. But you still
18 need staff to take the information from the application,
19 plug it in a template, type it up, and prepare the
20 resolutions.

21 And if we're going the route of consent items,
22 you know, you can approve a consent calendar in a few
23 seconds. But there is a lot of work that is involved to
24 actually prepare the resolution for the consent calendar,
25 and you do need staff for that.

1 PRESIDENT CARTER: Okay.

2 BOARD MEMBER BROWN: That's a good point.

3 PRESIDENT CARTER: Okay.

4 BOARD MEMBER RIE: And we're not going to be able
5 to wait until January -- July -- I'm sorry -- July 2008 to
6 bring in additional staff to help prepare consent
7 calendars or Board resolutions to avoid making any changes
8 to the legislative process. We'll need to have somebody
9 come and help with that in January.

10 PRESIDENT CARTER: All right. Any other comments
11 on evidentiary hearings?

12 Yes, sir.

13 VICE-PRESIDENT HODGKINS: I still am not sure I
14 understand at minimum what the requirements of evidentiary
15 hearings are. Is it possible to do that, I mean on one
16 page or less than one page?

17 DEPUTY ATTORNEY GENERAL CAHILL: There are in the
18 code section -- the new legislation provides that you
19 shall adopt regulations under a particular section of the
20 Administrative Procedures Act. And that act has one
21 section that has a pretty clear statement of what the
22 minimum requirements are. And it also has a provision for
23 informal hearings. But the legislation also requires you
24 on each permit to make findings in four areas, which is
25 new for you. And so I think even if you were going to do

1 the informal hearing, you're still going to need a staff
2 report that addresses those four points, in addition to
3 whatever else you need to --

4 BOARD MEMBER RIE: And that goes back to the
5 Board resolution. And it would be a standard template
6 with the findings already there. And, you know, you can
7 have a few options. "We find that the permit meets all
8 the requirements of the CEQA Act," or it doesn't. And
9 then you pick and choose. But you still need a staff
10 person to go through and figure out which finding's
11 appropriate for that particular permit. And that's not
12 strictly a clerical function. That is going to take some
13 engineering judgment to go through and figure out which of
14 two or three options is appropriate and what finding we
15 need to make. So you could make those findings in a board
16 resolution and then put it on the consent calendar. And
17 that will take care of I think the findings requirement.

18 PRESIDENT CARTER: Okay. Any other questions,
19 comments on that?

20 Okay. There have been some discussions -- and,
21 again, this is in the context of our discussions with DWR
22 on the MOA and the cleanup legislation -- the ex parte
23 communication requirements. DWR is proposing some
24 language that says that the ex parte communications apply
25 only to the evidentiary hearings that defines the timing

1 of when they actually go into effect. Any -- this
2 potentially has dramatic implications in terms of how the
3 Board has acted in the past. Because this Board has
4 enjoyed the opportunity where individual Board members can
5 go out and essentially kick the tires of a particular
6 project to try and understand better the issues of the
7 project and hopefully being able to make a more informed
8 decision when they come before the entire Board. Ex parte
9 may preclude that.

10 Any thoughts, concerns?

11 SECRETARY DOHERTY: Well, yeah. I would feel I
12 still want to go out and kick tires. I think it helps us
13 to make a better informed decision.

14 BOARD MEMBER BROWN: With ex parte you could
15 still go out and review projects. It just needs to be
16 announced, such that if the opposing party thinks that
17 something unfair or incorrect may be stated to the Board
18 member, that they would be there to hear it and to address
19 it. And therein lies the issue, is that if you go out and
20 view a project with a singular party, then you only here
21 one side of the issue. And that can become very unfair.

22 Ex parte rules, it's a good rule to make sure
23 that we try to make fair decisions, which we do. But,
24 again, if you just hear one side of an issue, it's awfully
25 hard to do that. And if it was a quasi-judicial, I guess

1 then that's where it comes into play. If it's not
2 quasi-legislative or whatever, then you could still go out
3 and review the project. But if it's something that needs
4 to be decided by the rules of evidence -- and not all
5 hearings that you have will need that -- but if you do,
6 then the fair thing is to make sure that both parties are
7 aware of your going out there meeting with another party,
8 so that at least they have the opportunity to partake or
9 not.

10 SECRETARY DOHERTY: I have a question.

11 PRESIDENT CARTER: And if you don't, I guess you
12 could disclose --

13 BOARD MEMBER BROWN: Sure.

14 PRESIDENT CARTER: -- in an open public
15 meeting --

16 BOARD MEMBER BROWN: Yes.

17 PRESIDENT CARTER: -- that you did have
18 communication --

19 DEPUTY ATTORNEY GENERAL CAHILL: Well, that's not
20 the desirable first choice. I mean if it basically says
21 don't do it and then if inadvertently it happens you
22 disclose. You don't see disclosure as an alternate way of
23 complying.

24 BOARD MEMBER BROWN: You may have to recuse
25 yourself from a vote on the issue.

1 PRESIDENT CARTER: Okay.

2 SECRETARY DOHERTY: A question about that.

3 I went out and looked at a project, and I didn't
4 want the opposing party there. I just wanted to hear what
5 this gentleman had to say. Then I went again with the
6 other party so I could hear what he had to say. And it
7 all came to the Board meeting and they were, both parties
8 to the discussion, there --

9 DEPUTY ATTORNEY GENERAL CAHILL: I think under
10 the new legislation, you wouldn't be allowed to approach
11 it that way. You'd really have to have them both there at
12 the same time or at least both have the opportunity to be
13 there.

14 This is one where I'm not sure -- what the
15 cleanup legislation -- to get it back into our agenda
16 topic, what the cleanup legislation is perhaps proposing
17 is merely clarifying when it attaches. I'm not sure --
18 and I'm sorry we didn't ask Dennis when he was here --
19 what the legislative intent was on this one, because in
20 the Administrative Procedure Act there is already an ex
21 parte requirement. And they said, "This ex parte
22 requirement isn't going to apply, and here's the one for
23 you." And it doesn't look that different to me, except
24 that the legis -- the ordinary one made it clear that it
25 attached at a particular time, and yours doesn't say when

1 it starts. Does it start when you first know of a
2 project? Does it start when you get the application?
3 Does it start when you notice the hearing? There's some
4 choices.

5 So for cleanup legislation purposes you might
6 want to be really clear on when it attaches.

7 I don't know. Scott, did you know what the
8 legislative thinking was on this? Or, Ben, have you
9 talked to them about what they had in mind?

10 STAFF COUNSEL MORGAN: No, I have no idea.

11 PRESIDENT CARTER: No.

12 DEPUTY ATTORNEY GENERAL CAHILL: But I do think
13 that it's showing an intent that you should start to do
14 this if you haven't in the past. I mean I think that much
15 intent is clear by the fact that they put this provision
16 in.

17 BOARD MEMBER BROWN: A rule of thumb that you
18 might consider is that if an issue is out there and you as
19 a board member think it may come before the Board, then
20 the judgment call would be not to have ex parte
21 communication.

22 On the other hand, if it's an issue that it's not
23 foreseeable coming before the Board and that it's a
24 problem that is brought to you by the staff, and you want
25 to go out and review what might be done, I think that's

1 clearly acceptable. But if you think something may come
2 before this Board, then that would fall under the ex parte
3 rule.

4 PRESIDENT CARTER: Go ahead.

5 BOARD MEMBER RIE: I think this issue was
6 addressed in the legislative analysis of SB 17. That's
7 where they go through and they talk about their rationale
8 for why they came up with these bills. And I haven't read
9 it for a long time. But I seem to recall that they wanted
10 to set up our Board and make it similar in function to the
11 Air Resources Board. So I think it was just pretty
12 arbitrary, you know, "We want ex parte rules to apply and
13 we want the Board to have a salary similar to the Air
14 Board."

15 So I don't think that the legislative effort was
16 intending to completely eliminate ex parte communication.
17 I think they just wanted to have a process that was
18 similar to all the other boards. And all the other boards
19 pretty much have ex parte rules. And then they have
20 standard agenda items where at the beginning of the
21 meeting if you've had any discussions outside the hearing,
22 you're obligated to put that in the public record. And
23 I'm thinking that they just want us to follow the same
24 rules as all the other boards. And that's just from what
25 I read in the analysis.

1 But in terms of not looking at a project -- for
2 us, we have to go out and look at the projects.

3 So I think that we should probably have a
4 standard agenda item, you know, ex parte communications.
5 And it's not so much just the verbal correspondence that
6 is important to consider. It's also written
7 correspondence. I think most boards are set up such that
8 if someone sends a letter to one board member, all board
9 members are required to have the same correspondence. And
10 I know we do it with our board in the county. If you send
11 one letter to one staff member or one board member, they
12 all automatically get it as to avoid the ex parte
13 communications.

14 So whether it's a letter of opposition or a
15 letter of support, if it comes to one Board member
16 individually, we're all obligated to give it to all the
17 Board members, and to announce that in the public record
18 so everyone knows that this correspondence has taken
19 place.

20 And that could be the neighbor that's living
21 behind the levee. If they have an objection to the levee
22 project, it needs to be entered into the public record and
23 we all need to see that correspondence. And I don't think
24 we've been doing that. And I think it's a good rule and I
25 think we should start doing it.

1 PRESIDENT CARTER: Okay. Mr. Shapiro, have a
2 seat.

3 MR. SHAPIRO: Thank you. Scott Shapiro on behalf
4 of numerous clients. As one of the potential ex partes, I
5 thought maybe I'd offer a few thoughts on this as well.

6 One of my concerns about the legislation is it
7 refers to ex parte communication applying to matters under
8 the Board's jurisdiction subject to vote, not just
9 projects. And, for example, I'm thinking of the recently
10 appointed and created 408 task force, which may come
11 before this Board for a vote at some point. And Butch
12 sits on that and I sit on that. And starting in January,
13 I'm concerned that this rule will create ex parte
14 communication problems for that task force. Even if I as
15 a local applicant wasn't sitting on it, I think the fact
16 that DWR is on it creates a problem, because it refers to
17 any person or organization with an interest in DWR clearly
18 has an interest.

19 So I had two suggestions in particular. One is
20 is that in your legislative cleanup you might think about
21 this issue of project versus matter or permit application
22 versus matter; and maybe there's a logical distinction
23 there.

24 The other is to seek guidance from your counsel
25 now as to how Board members on January 1 should start

1 complying with this on those issues. Because I don't
2 think that the Legislature intended that we not have that
3 task force or that you not do the normal things that you
4 do subject to some modification and communication.

5 But at the first meeting in January, you know,
6 does Butch, for example, have the guidance to know what he
7 should say on the record about the fact that we might have
8 had a 408 task force meeting before The Rec Board meeting?
9 And to the extent you can get guidance now on how to
10 comply with that, I think it will make it easier.

11 I know for my purposes, if I'm going to
12 communicate with Board members starting on January 1, my
13 intention is to provide a written outline to the Board
14 members at the time I communicate with them and to follow
15 that outline, so they will very easily be able to come to
16 the Board meeting and hand in the outline and say, "I had
17 a contact. Here was the subject of my contact." Everyone
18 can look at it. If anyone thinks there was something in
19 there worth discussing, then we can discuss it. But I'm
20 going to try to facilitate that, because it's unrealistic
21 to think that some communication won't occur.

22 But I agree with this timeline issue that's being
23 looked at for legislation. I think that distinctions
24 between matters and projects could help; and, again, some
25 process for what to do January 1, because you may live

1 under this for a year.

2 So thanks for the chance to comment.

3 PRESIDENT CARTER: Thank you.

4 BOARD MEMBER BROWN: Mr. Chairman?

5 PRESIDENT CARTER: Mr. Brown.

6 BOARD MEMBER BROWN: If we serve on task forces
7 and become in a sense a project engineer to help design
8 solutions to the problem, and Mr. Shapiro or somebody out
9 thinks that the task force is wrong and then it becomes
10 before this Board, then you have to make a judgment call
11 on it. And it's hard to be project manager and judge at
12 the same time.

13 It's particularly difficult for engineers to lay
14 down that tool of being an engineer and project manager
15 coming up with solutions to issues, as opposed to
16 listening to solutions by interested parties and then make
17 a judgment call or decision on it. It changes our role.

18 It's difficult if we come to be project engineer
19 and judge at the same time on issues before this Board.

20 PRESIDENT CARTER: Okay. Any other questions?

21 Comments?

22 Okay. I think we're -- I'd like to maybe -- I've
23 kind of gone through my list at this point. We're
24 reaching 11:30 when we wanted to adjourn.

25 I'd like to open it up to either any general

1 comments from Board members, staff, members of the public
2 that they'd like the Board to hear.

3 Eric.

4 SENIOR ENGINEER BUTLER: I would like to just
5 make a quick five-point presentation on the status of the
6 financial document, the BCP, and where we are with that
7 that ties to the -- and where you are at the MOU. If you
8 would like me to, I would be prepared to do that.

9 PRESIDENT CARTER: Okay. Okay with you?

10 GENERAL MANAGER PUNIA: I think -- yeah.

11 Eric understands that we cannot go into the
12 detail. He will just give you the concept. so that will
13 be a quick synopsis of the concepts.

14 PRESIDENT CARTER: All right.

15 SENIOR ENGINEER BUTLER: Eric Butler, staff's
16 engineer for the Board.

17 At Jay's direction, I've been working with Kathy
18 Kishaba in DWR's Budget Office to put together the
19 proposal that Department of Finance reviews to actually
20 fund any additional augmentation to the Board, be that
21 staff, be that operating expenses, et cetera.

22 And while I'm not allowed to go into much in the
23 way of detail, I think some of the points I have might
24 help to clarify some of the comments that were raised
25 earlier and some comments that Mr. O'Connor had made.

1 The current thinking at the direction of the
2 Department of Finance is that DWR establish a new program
3 element, or I believe it's also referred to as a line
4 item, within DWR's budget for the Board. And that
5 effective -- and that would be effective not until July 1,
6 the beginning of the next fiscal year. But that line item
7 would include our current budget and any additional
8 funding that we would receive through augmentation in the
9 Governor's 2008-2009 budget.

10 There is no mechanism that the Department of
11 Finance has at their availability to augment our current
12 fiscal year funding. So we are base line through June
13 30th, 2008, without any additional funding. The impact of
14 that is that any additional financial impact that the
15 Board has -- and the obvious one here is the Board member
16 salaries -- those salaries and any other expenditures that
17 we incur as a result of the new legislation prior to June
18 30th will have to be paid for out of the existing
19 Department budget. So we're not going to get any
20 additional funds until, at the earliest, July 1.

21 There may be some ways to move positions and fill
22 some positions -- some new positions early. That's at a
23 very preliminary level of discussion at this time.

24 But at the direction of the Department of Finance
25 right now, DWR's Budget Office is submitting a proposal to

1 the Department -- to the Governor's budget that will
2 establish this new program element and put in a
3 placeholder in the -- in the Governor's budget to fund us
4 effective June 1st. And then as the MOU/MOA is developed
5 and finalized, that will become part of the overall plan
6 in addition to this financial tool that will go to Finance
7 sometime this spring to fund any additional positions and
8 operating expenses that we require as a result of the
9 reorganization into the new Board.

10 PRESIDENT CARTER: Thank you.

11 Any questions for Mr. Butler?

12 Okay. That certainly sounds workable.

13 Mr. Punia.

14 GENERAL MANAGER PUNIA: Ben, we need to discuss
15 whether we want to have the meeting on the 14th or not on
16 the same subject. We have proposed a meeting to discuss
17 the same subject. I think it would be up to the Board to
18 decide.

19 PRESIDENT CARTER: Right.

20 First, I wanted to make some time here. Are
21 there any members of the public that would like to address
22 the Board on this?

23 Just listening. Okay.

24 Very good.

25 At our last meeting the Board gave Butch and

1 myself the discretion as to determine whether or not we
2 need a meeting for the 14th.

3 There is a meeting between Rec Board Executive,
4 DWR Executive the middle of next week to talk about the
5 MOA and other things. The results of that meeting, I
6 don't know what those are going to be. I would like to
7 have people protect the time for next Friday until we know
8 whether or not there's a reason to meet on the 14th.

9 And so I would like to -- I'd like for you to
10 give us or leave us the flexibility to determine whether
11 or not we need a meeting on the 14th until the middle of
12 next week. And we can let everyone know. It's properly
13 noticed. It's agendized. We've got a location, which is
14 the Resources Building Auditorium. We can cancel it at
15 any time.

16 So is the Board comfortable with just kind of
17 leaving that open and flexible at this point?

18 Okay. So we'll stay tuned.

19 BOARD MEMBER RIE: You could just send us an
20 e-mail a couple days ahead of time.

21 PRESIDENT CARTER: Yeah.

22 Okay. Well, I don't have anything else.

23 If nobody else has anything else, then we will --
24 Lorraine.

25 STAFF ASSISTANT PENDLEBURY: I'd just like to say

1 that because these meetings are so important, I've asked
2 the transcription service to expedite the transcripts of
3 these meetings. So we expect to have the transcript done
4 on the 13th. We've asked for the 13th for this. Okay?

5 PRESIDENT CARTER: Great. And that will be
6 posted on the website?

7 STAFF ASSISTANT PENDLEBURY: It will be posted on
8 the website.

9 PRESIDENT CARTER: Okay. Very good.
10 Jay.

11 GENERAL MANAGER PUNIA: One more announcement.

12 For the record, I just wanted to inform the
13 public and the Board members, that the regularly scheduled
14 meeting for the 21st, we have split the meeting into two
15 meetings. The first meeting will take place on the 20th
16 and the second meeting will be on the 21st.

17 PRESIDENT CARTER: Both in the Resources
18 Auditorium downtown

19 Any other questions?

20 Then we are adjourned.

21 Thank you very much for joining us.

22 (Thereupon the Reclamation Board open

23 session meeting adjourned at 11:33 a.m.)

24

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1 CERTIFICATE OF REPORTER

2 I, JAMES F. PETERS, a Certified Shorthand
3 Reporter of the State of California, and Registered
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the
6 foregoing Reclamation Board open session meeting was
7 reported in shorthand by me, James F. Peters, a Certified
8 Shorthand Reporter of the State of California, and
9 thereafter transcribed into typewriting.

10 I further certify that I am not of counsel or
11 attorney for any of the parties to said meeting nor in any
12 way interested in the outcome of said meeting.

13 IN WITNESS WHEREOF, I have hereunto set my hand
14 this 12th day of December, 2007.

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22 JAMES F. PETERS, CSR, RPR
23 Certified Shorthand Reporter
24 License No. 10063
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